



CLOSED CASE SUMMARY

ISSUED DATE: JULY 13, 2020

CASE NUMBER: 2019OPA-0758

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employees conducted a one-sided investigation into an incident involving him and that this was due to their bias against him.

SUMMARY OF INVESTIGATION:

Officers, including the Named Employees, responded to a disturbance call at a Seattle Public Library. The officers were initially informed of a report from a library security guard that a female library employee had been struck in the face by the subject. The officers were provided a description of a Black male subject – who is the Complainant in this case. The call was later updated to note that the employee, who is a White female, was not punched but that the Complainant grabbed her and swung her around, causing her nail to break. The officers' response to this call was fully recorded on Body Worn Video (BWV).

When the officers arrived at the library, they spoke with a security guard who identified the Complainant as the suspect. The officers conferred and Named Employee #1 (NE#1), who was the primary officer and a student officer at the time, asked other officers, including Named Employee #2 (NE#2) to remain with the Complainant while she conducted her investigation. NE#1 also spoke with Named Employee #3 (NE#3), who was her Field Training Officer (FTO), concerning whether there was probable cause for arrest and whether the Complainant should be handcuffed. NE#3 did not provide NE#1 with any substantive guidance in this regard.

NE#1 and NE#3 then went to speak with the employee. She articulated that, while working at a snack stand, the Complainant approached and asked to use a discount. The employee said that she told the Complainant that the



discount could not be applied, and he grew angry. She recalled that the Complainant became increasingly aggressive and began holding his cell phone in front of her face. She said that she took the phone out of the Complainant's hand and he forcibly grabbed it back, causing her to spin around. She stated that this caused her to suffer an injury when her nail was ripped out. The Named Employees told the employee that she was not permitted to take the Complainant's phone and that he had a right to film her in a public place.

After speaking with the employee, the Named Employees discussed the incident. NE#1 asserted her belief that there were two possible crimes, assault by the Complainant and theft of the phone by the employee. NE#1 and NE#3 also discussed that the Complainant may have been legally permitted to use physical force to take his phone back.

NE#1 further watched the library security of the video while library staff operated the system. The video showed the incident and depicted the Complainant forcibly grabbing the phone from the employee.

NE#1 also interviewed the Complainant and got his account. He alleged that the employee improperly failed to provide him with the discount when other library staff had done so in the past. He contended that this was based on his race. He described the employee grabbing his phone and said that he had the right to take it back. He denied engaging in an assault.

After discussing the incident with other officers, including NE#2, NE#1 made the decision to write a report and to not make any custodial arrests. NE#1's report that she ultimately completed recommended that the City Attorney's Office consider charging the Complainant with assault. The report did not include a recommendation that the employee be charged with theft.

The Complainant later alleged that the Named Employees' response to this incident constituted biased policing. He contended that the investigation was one-sided and that this was due to the Named Employees' bias towards him. He alleged that NE#1 conspired with library staff to only review those portions of the video that incriminated him (as discussed below, this is disproved by the BWV). He lastly denied that he assaulted the employee and asserted that she should have been arrested for robbery. This investigation ensued.

OPA's investigation consisted of reviewing the BWV and the documentation generated by the Named Employees. OPA also interviewed the Complainant (whose interview is summarized above), NE#1, and NE#3.

NE#1 denied that she engaged in biased policing. She stated that, when she first reported to the incident, the Complainant was identified to her as the suspect. She also noted that she was dispatched to an assault call in which the Complainant was identified as the perpetrator. She asserted, however, that she conducted a full investigation. She told OPA that she believed that the employee engaged in theft but that, after conferring with other officers, she was convinced that the "intent to deprive" element of the crime was not met. She did believe, however, that there was a sufficient basis to conclude that the Complainant assaulted the employee. NE#1 denied that she engaged in biased policing. She asserted that the evidence supported her determination that the Complainant committed an assault and that her decision to recommend that he be charged was based on his conduct, not his race. She further asserted that the employee was not charged because NE#1 did not believe that the elements to establish theft were met, not because she was White. Lastly, NE#1 offered that one of her parents were Black and this provided further evidence of her lack of bias.



NE#3, like NE#1, denied that the officers' decision-making was based on bias. He believed that there was probable cause to conclude that the Complainant engaged in an assault but that they could not establish that the employee met the elements of theft. NE#3 did not believe that NE#1's recommending that the Complainant be charged was informed by bias. He stated that he reviewed and approved her report, which included her charging recommendation. NE#3 further told OPA that it was appropriate not to charge the employee. To this end, NE#3 opined that the officers could not prove that the employee intended to permanently deprive the Complainant of his property; however, OPA notes that this is not an element of theft.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

OPA finds that there is an insufficient basis to determine that any of the Named Employees engaged in biased policing.

NE#1's investigation included interviewing all of the parties involved in the incident and reviewing security video. Contrary to the Complainant's contentions otherwise, she did not control the video system and did not only focus on those aspects of the video that implicated the Complainant. OPA notes that NE#1 thoroughly discussed the incident and the potential crimes at issue with other officers. She believed that both the Complainant and the employee committed crimes and fully considered whether the Complainant acted in self-defense. Her and the other officers' thoughtful and considered deliberations in this regard were fully captured on BWV and evidenced the lack of bias on their parts. This is the fact even if the Complainant – or OPA for that matter – disagrees with the officers' ultimate conclusions.

Bias must be set forth by actual evidence and when applying a high burden of proof. The evidence proffered by the Complainant here is that the officers' bias is established by their belief the he committed a crime when compared to the officers' failure to find, instead, that the employee – a White woman – engaged in criminal activity. While OPA understands and empathizes with the Complainant's frustration concerning this incident and its outcome, his assertions in this regard are insufficient to overcome the BWV and the reasonable interpretations of the evidence and its weight that were articulated by the Named Employees. Ultimately, when applying the requisite evidentiary standard, OPA cannot find that the Named Employees' actions were based on bias and that they violated this policy.

As such, OPA recommends that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

Recommended Finding: **Not Sustained (Unfounded)**



Named Employee #2 - Allegations #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #3 - Allegations #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**